

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LESTER R. SHINAULT,

3:11-CV-00436-PK

Plaintiff,

ORDER

v.

DICK HAWKS, TAMI DOHRMAN,
MARTHA McDANIEL, and OREGON
DEPARTMENT OF CORRECTIONS,

Defendants.

BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and Recommendation (#61) on June 11, 2012, in which he recommends the Court grant Defendants' Motion (#27) for Summary Judgment and dismiss Plaintiff's claims with prejudice. On August 21, 2012, Plaintiff filed a document the Court construed as Objections to the Findings and Recommendation. The matter is now before this

Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988).

In his Objections Plaintiff reiterates the arguments contained in his Response to Defendants' Motion for Summary Judgment. This Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify the Findings and Recommendation.

The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation with respect to Plaintiff's claims that Defendants violated his rights under the First, Sixth, and Eighth Amendments to the United States Constitution as well as Plaintiff's claim that Defendants conspired to interfere with his civil rights.

In their Response to Plaintiff's Objections, however, Defendants point out that in the Findings and Recommendation the Magistrate Judge did not address the claim that Plaintiff arguably raised and that Defendants addressed in their Motion for

Summary Judgment regarding Plaintiff's allegation that Defendants violated Plaintiff's rights to due process under the Fourteenth Amendment. The Court agrees. The Court, therefore, refers to the Magistrate Judge for further Findings and Recommendation Plaintiff's allegation that Defendants violated Plaintiff's rights to due process under the Fourteenth Amendment.

CONCLUSION

The Court **ADOPTS in part** Magistrate Judge Acosta's Findings and Recommendation (#61) to the extent that the Court **GRANTS** Defendants' Motion (#27) for Summary Judgment as to Plaintiff's claims for violation of the First, Sixth, and Eighth Amendments and Plaintiff's claim for conspiracy to interfere with his civil rights **DISMISSES** those claims **with prejudice**. The Court, therefore, **REFERS** to the Magistrate Judge for further Findings and Recommendation Plaintiff's allegation that Defendants violated Plaintiff's rights to due process under the Fourteenth Amendment.

IT IS SO ORDERED.

DATED this 6th day of September, 2012.


ANNA J. BROWN
United States District Judge